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Report to the Chairman, Subcommittee on Energy and Power, Committee on Energy and Commerce, House of Respresentatives

April 1988

ELECTRIC POWER TRANSMISSION

Federal Role in System Use and Regulation

ORIGINAL

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Resources, Community, and
Economic Development Division

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April 12, 1988

The Honorable Philip R. Sharp
Chairman, Subcommittee on Energy
and Power
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

In May 1987 you asked us to examine the federal role in the use and regulation of the nation's electric power transmission systems—especially the nature and extent of federal efforts to resolve cases involving disputes over access and transmission facilities or services. These cases generally involve situations where (1) a utility has requested to interconnect its transmission system with that of a neighboring utility, under emergency conditions, (2) a utility has requested to interconnect its system with a neighboring utility's system or has requested power to be transmitted by a neighboring utility, or (3) there is a dispute involving the transmission of power between a buyer and seller over the transmission lines of a third party (referred to as "wheeling"). During subsequent discussions with your office, it was agreed that we would identify and describe transmission-access cases decided by (1) the Federal Energy Regulatory Commission (Commission), (2) the Commission's predecessor, the Federal Power Commission,[1] and (3) the federal courts.

We briefed your staff in November 1987 on the preliminary results of our review. At that time, we agreed to provide you a written report that would include the information covered during the briefing as well as information on legislative authorities used as criteria to decide access disputes.

In summary, our review disclosed 40 cases based on decisions rendered through August 1987 involving transmission access. These cases were initiated between September 1963 and January 1986. They contained 75 separate decisions that addressed a variety of transmission-access issues raised by case initiators. The most frequently raised issues were actual or constructive denial of access, anticompetitive practices, and discriminatory practices. The outcome of the 75 decisions was that requested transmission service was denied in 28 instances and granted

[1]Throughout this report, the term "Commission" will refer to the Federal Energy Regulatory Commission as well as the Federal Power Commission.

parties to the dispute were approved by the Commission in 18 instances, and the Commission decided compromises in 10 instances.

A description of the objectives, scope, and methodology of our review is contained in appendix I. Appendixes II through VIII contain a discussion of the general legal authority pertaining to electric power transmission access and details on the results of our review, including issues raised, types of requested service, and decisions reached. The key results of our work are highlighted below.

Legislative Bases for Resolving Transmission-Access Disputes

Legislation relevant to the resolution of transmission- access disputes includes the Federal Power Act, the Sherman Antitrust Act, and the Clayton Act. The Federal Power Act, for example, as amended by the Public Utility Regulatory Policy Act (PURPA), directs the Commission to promote and encourage interconnection and coordination among utilities and provides authority for the Commission to order a utility, under certain circumstances, to provide transmission services to another utility. The act grants the Commission authority to address transmission-access disputes by giving the Commission authority to (1) order utilities, under specified terms and conditions, to interconnect their transmission systems (Sec. 202(b)), (2) order interconnection and delivery of electricity in emergency situations (Sec. 202(c)), and (3) make determinations of the reasonableness and fairness of utility activities and require compliance with its determinations (Sec. 206). Further, the Commission was charged with ensuring the reasonableness and fairness of wholesale electricity rates as well as other utility services (Sec. 205).

PURPA's amendment of the Federal Power Act in 1978 expanded and clarified the conditions under which the Commission could order transmission interconnections (Secs. 210 and 212). PURPA also provided the Commission new authority to order utilities to provide transmission services, including an enlargement of transmission capacity to provide such services, subject to specified restrictions and conditions (Secs. 211 and 212). This provision is generally referred to as authority to order wheeling services.

The Sherman Antitrust Act and the Clayton Act, among other things, preclude businesses from engaging in anticompetitive and discriminatory practices. The statutes are generally intended to protect against concentration of power and discriminatory business conduct that interferes with trade and commerce. These two acts, together with the Federal Power Act, have provided the bases for utilities and others to seek

concentration of power and discriminatory business conduct that interferes with trade and commerce. These two acts, together with the Federal Power Act, have provided the bases for utilities and others to seek resolution of disputes involving transmission services. (A more detailed description of legislation pertinent to transmission-access disputes is contained in app. II.)

Information on the Nature of Transmission-Access Cases

Our review identified 40 separate Commission and court cases originating since enactment of the Federal Power Act in 1935 and involving disputes related to transmission access. The cases we identified were initiated between September 1963 and January 1986.[2] (See app. III for a listing of the 40 cases.) Of the 40 cases, 31 were filed with the Commission and the remaining 9 were filed in federal courts.[3] In terms of the geographic location where the disputes originated, our work showed that the north-central and southeastern regions of the country accounted for about 56 percent of the total. (See app. IV.) In comparison, about 23 percent of the cases originated in the western and south-central regions.

In terms of the types of transmission services requested in the cases, we found that wheeling was the most frequently requested service, representing about 72 percent of the total number of services requested. The remaining requests were for interconnection (20 percent) and emergency service (8 percent).

We also compared data on the types of services requested in the 31 Commission cases on a pre- and post-PURPA basis. Eighteen Commission cases originated during the 15-year period preceding PURPA's enactment (Sept. 1963 to Nov. 1978) and 13 cases originated in the 7-year post-PURPA period (Nov. 1978 to Jan. 1986). We made this comparison to determine whether the Commission's additional authority to order wheeling, as contained in PURPA, influenced the nature of transmission access cases' being filed. As shown in table 1, there was a decrease in the number of requests for each type of transmission service. However, as a percentage of total requests for service, the number of wheeling requests increased while the number of emergency and interconnection requests decreased.

[2]These cases were identified primarily through a search of two computerized data bases: Lexis-Nexis maintained by Mead Data Central, Inc. and Westlaw, maintained by West Publishing Company. The data bases contain records of federal case law from 1798 and records of Commission decisions from the agencies' inception.

[3]Eight of the nine court cases were filed in federal district courts. The ninth case, involving the Bonneville Power Administration, was first filed with the Court of Appeals, Ninth Circuit.

cases. (More detailed information on the types of transmission services requested in the cases we reviewed is contained in app. V.)

Table 1: Frequency Distribution of Requested Services in Commission Cases, Pre- and Post-PURPA

	Types of requested service[a]					
	Emergency		Interconnection		Wheeling	
Time period	No.	Percent	No.	Percent	No.	Percent
Pre-PURPA	4	16	6	24	15	60
Post-PURPA	0	0	2	14	12	86

[a]The total number of requested services is more than 31 because some cases involve more than 1 requested service.

As part of our review of the 40 cases, we also noted the issues that were raised by either the case initiator, other parties to the case, or the Commission. We found that the issues most often raised were actual/constructive denial of transmission services (25 percent of the total number of times that issues were identified in the case documentation), anticompetitive practices (22 percent of the total), and discriminatory practices and/or pricing (20 percent). These three issues were the most frequently raised issues both before and after PURPA's enactment. Other specific issues raised included the reliability of transmission systems and public interest issues. (More details on the issues raised in transmission-access cases are contained in app. VI.)

Information on the Resolution of Transmission-Access Cases

For the 40 transmission-access cases in our review, we identified 75 decisions which were initially rendered by either the Commission or the federal courts. Of the 75 decisions, 27 were appealed to the federal appellate courts.

Decisions Reached

Overall, we found that of 62 Commission decisions, requested transmission services were granted 15 times, denied 19 times, and compromised 10 times; and Commission-approved settlements were reached 18 times. Results for the initial court decisions showed that transmission services were granted four times and denied nine times. With respect to the 27 decisions that were appealed, the appellate courts upheld the original decision in 16 instances and overturned or remanded the original decision 11 times.

Decisions Reached Relative to Type of Transmission Service Requested

We also examined the decisions reached in terms of the types of transmission services requested by the case initiator. We found that for the Commission decisions where wheeling was the requested service (wheeling was the most frequently requested service), the Commission granted the service 13 percent of the time, denied the service 33 percent of the time, and decided a compromise or approved a settlement 54 percent of the time. Concerning cases involving interconnection services, the Commission granted the service 70 percent of the time, denied the service 10 percent of the time, and compromised/settled 20 percent of the time.

With respect to initial court decisions, wheeling services were granted 27 percent of the time and denied 73 percent of the time. In the two court decisions involving interconnection, one decision granted the service and one decision denied the service.

Commission Decisions: Pre- and Post-PURPA

In examining Commission decisions reached before and after PURPA, we found that the percentage of decisions granting the requested transmission service decreased from about 29 percent for pre-PURPA decisions to about 22 percent for post-PURPA decisions. With respect to Commission decisions denying the requested service, we found that before PURPA, 38 percent of the decisions denied the requested service while, after PURPA, about 27 percent of the decisions denied the requested service. For decisions approving a settlement, about 14 percent of the decisions reflected settlements before PURPA while, after PURPA, nearly 37 percent of the decisions reflected approved settlements. (See app. VII for further details.)

Legislative Citations in Commission Records-of-Decision

In our overall examination of Commission decisions reached in transmission access cases, we identified legislation cited in the records-of-decision we reviewed. Our purpose was to correlate, to the extent possible, specific sections of law with the decisions reached. Of a total of 131 instances where specific legislation was correlated with Commission decisions, 68 (about 52 percent) referred to either Section 205 or 206 of the Federal Power Act. The remaining 63 correlations (about 48 percent) involved 7 other legislative citation categories.

The issues raised in the decisions where Sections 205 and 206 were cited usually involved disputes over wheeling rates. In 26 (about 38 percent) of these instances, the Commission approved a settlement reached by the parties to the dispute. In 31 percent of these instances, the requested transmission service was denied. In 12 percent, the requested service

was granted and, in 19 percent, the Commission decision represented a compromise. (See app. VIII for further details.)

Our work was based on a review of Commission and court records-of-decision which were identified through searches of computerized data bases. The review was made between June 1987 and January 1988. (See app. I for more details about our objectives, scope, and methodology.) We discussed with a Commission official the methodology of our review, and information on the nature and resolution of the cases. This official raised no concerns with the methodology of our review and said our universe of cases included all the relevant transmission-access cases of which he was aware. However, as requested by your office, we did not obtain official agency comments on this report.

We will make no copies of this report available until 7 days from this report's issue date unless you release the contents of the report sooner. At that time, we will provide copies to the Federal Energy Regulatory Commission and to other interested parties upon request.

Major contributors to this report are listed in appendix IX.

Sincerely yours,

Keith O. Fultz

Keith O. Fultz
Senior Associate Director

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Abbreviations

FERC	Federal Energy Regulatory Commission
FPC	Federal Power Commission
GAO	General Accounting Office
PURPA	Public Utility Regulatory Policy Act

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Objectives, Scope, and Methodology

The objective of our review was to identify and describe those electric power cases in which access to electric transmission services or facilities was an issue and which were decided by the Commission and the federal courts. The steps we took to accomplish this objective are described below.

To establish our data base of transmission-related cases, we relied on electronic searches of two computerized data files—Lexis/Nexis and Westlaw—as well as case references from discussions with Commission officials. We searched the computerized data files in June, July, and August 1987 by using key words (wheeling or access-to-transmission) or by using legal citations pertaining to electricity transmission, shown in table I.1.

Table I.1: Computerized Data Files Used to Establish GAO's Data Base

Case type	Search key
(Westlaw)[a]	
Court	Wheeling
Court	Access-to-transmission
Commission	Wheeling
Commission	Access-to-transmission
(Lexis/Nexis)[a]	
Commission	Legal citations
Commission	Wheeling
Commission	Access-to-transmission

[a]Data bases

The electronic search of the computerized data bases identified references to 278 Commission and court records-of-decision. After reviewing a synopsis of each of these records, we initially determined that 75 were relevant to our data base, 138 were nonapplicable, and 65 were duplicates. Relevant records were defined as those that described cases where (1) one party sought to buy power from a second party and use the transmission lines of a third party to wheel the power, (2) one party sought to interconnect its transmission system with the transmission system of another utility, and (3) the transmission-line owner filed a tariff or initiated an action that was opposed by an affected party on such grounds as actual or constructive denial of reasonable transmission access.

Those records determined to be nonapplicable did not meet any of the above three criteria because either (1) they were totally unrelated to

electric power transmission access and wheeling issues (some of the computer-identified decisions, for instance, were identified because they mentioned Wheeling, West Virginia) or (2) the records were of decisions that were administrative or procedural and thus did not substantively address transmission-access issues. Duplicate records-of-decision resulted from identifying a single record two or more times in computer searches from several data files or when computer-identified records duplicated those from a list given to us by Commission officials.

We finalized our data base by conducting a docket-history search for Commission dockets cited in the 75 records-of-decision originally determined to be applicable. From this docket search, additional applicable records-of-decision were identified and added to our data base. Other Commission and/or lower court records were identified through review of appeals court decisions. Finally, upon closer examination, some of the decisions initially determined to be relevant were later determined to be nonapplicable. The above efforts resulted in the data base for this report, which includes 75 decisions made in 31 Commission cases and 9 court cases that originated between September 1962 and January 1986. Twenty-seven of the 75 decisions were appealed to the federal appellate courts.

Our overall purpose in highlighting the above types of information is to provide a base-line of information about (1) the extent to which access to electric power transmission services or facilities may be a problem and (2) the nature of cases involving access-to-transmission issues. No attempt has been made to judge the merits of issues raised by the parties or the decisions reached by the Commission or the courts. Issues were included in our data base, for example, regardless of the ultimate case resolution—that is, they were identified even if they were later found to be without merit in the initial decision or during an appeal process. Similarly, Commission and court decisions were maintained in the data base even though some of them may have been appealed at a later date.

For each decision included in our data base, several categories of information were recorded, including the case docket number, location and type of the entity filing the case, issues raised, conclusions reached, and decision dates. These data were sorted and correlated, and the results are described in the appendixes. Additionally, since major legislation affecting transmission service was enacted in 1978 (PURPA), several categories of information in our data base were analyzed on a pre- and post-PURPA basis. As the Chairman, Subcommittee on Energy and Power,

House Committee on Energy and Commerce, requested, we have also included information about the time required by the Commission and the courts to resolve each case in our data base.

Legal Authority Pertaining to Electric Power Transmission Access

Commission authority for regulating electric power transmission is contained in the Federal Power Act of 1935 (16 U.S.C. 824). The act was amended in 1978 by the Public Utilities Regulatory Policy Act (PURPA), which gave the Commission new authority over the transmission of electric power. The act and the changes affected by PURPA are discussed below. The Sherman Antitrust Act and the Clayton Act are also discussed below since they provide a basis for judicial involvement in transmission-access disputes.

The Federal Power Act provides the Commission authority to order interconnection of transmission facilities. Except in emergency situations, the Commission can issue orders only upon the application of state utility commissions or persons engaged in the transmission or sale of electric energy. Specific Commission authority over electric power transmission includes the following:

- Section 202(a): The Commission is to "divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy . . ." and to promote and encourage interconnection and coordination within and between such districts.
- Section 202(b): The Commission has the authority to order a public utility to establish physical connection of its transmission facilities with the facilities of others and to prescribe the terms and conditions of such an order provided that (1) the interconnection is in the public's best interest, (2) no undue burden is placed on the public utility, (3) the Commission has "no authority to compel the enlargement of generating facilities for such purposes," and (4) the Commission may not compel the public utility to sell or exchange its energy if this would impair the utility's ability to render adequate service to its customers.
- Section 202(c): When the Commission determines that an electricity-related emergency exists, it can order (1) temporary interconnection of generation and transmission facilities and (2) delivery, interchange, or transmission of electric energy. It can also prescribe terms of the arrangement that are just and reasonable if the parties cannot agree.
- Section 205: The Commission must ensure that wholesale electricity rates are just and reasonable. No public utility under the Commission's jurisdiction can (1) grant any undue preference or advantage to any person or subject any person to any undue disadvantage or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect between localities or between classes of service.
- Section 206: If the Commission determines that a rate, charge, practice, or contract is unreasonable, unduly discriminatory, or preferential, it

can determine what is just and reasonable and require compliance with its determination.

Effects of the Public Utilities Regulatory Policy Act on the Federal Power Act

PURPA added sections to the Federal Power Act that allow the Commission, in certain circumstances, to require (1) interconnection of transmission systems, (2) provision of transmission services, and (3) enlargement of transmission capacity. The added sections also impose, however, several restrictions that place limits on when and how the Commission can exercise this authority. PURPA changes to the Federal Power Act affecting Commission authority over transmission include the following:

- Section 210: (interconnection authority) The Commission, on its own motion or upon application of an electric utility, among others, can order the physical connection of transmission facilities and any necessary increases in transmission capacity. The order cannot be issued unless the Commission finds that the interconnection is in the public interest and (1) encourages overall conservation of energy or capital, (2) optimizes the efficient use of facilities and resources, or (3) improves the reliability of any electric utility system to which the order applies.
- Section 211: (wheeling authority) Upon application of a utility, among others, the Commission can order a utility to provide transmission services to another utility (including wheeling and an enlargement of transmission capacity necessary to provide these services). The Commission, with certain restrictions, must find the proposed wheeling to be in the public interest and that wheeling would (1) conserve a significant amount of energy, (2) significantly promote efficient use of facilities and resources, and (3) improve the reliability of the electric utility system to which the order would apply. For a wheeling order, the Commission must also determine that its order would reasonably preserve existing competitive relationships.
- Section 212: (additional restrictions) No order may be issued by the Commission under Sections 210 and 211 unless it determines the following:

  a. There is reasonable certainty that no uncompensated economic loss is likely to occur for any of the affected parties.

  b. No affected party will be subjected to an undue burden.

  c. The reliability of any utility affected by the order will not be unreasonably impaired.

d. The order will not impair the ability of any affected utility to render adequate service to its customers.

The Sherman Antitrust Act and the Clayton Act

The federal antitrust statutes provide a basis for federal judicial involvement in transmission-access disputes. The statutes are generally intended to protect against concentrations of power and discriminatory business conduct that interfere with trade and commerce. The Sherman Antitrust Act (15 U.S.C. Secs. 1-7) prohibits any conduct which might result in a monopoly or otherwise interfere with the freely competitive pricing or distribution systems of the interstate trade market. The Clayton Act (15 U.S.C. Secs. 12-27) amended the Sherman Antitrust Act and prohibits such things as price discrimination, exclusive dealing contracts, mergers, and interlocking directorates, where the effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Transmission-Access Case Indexes

Our review identified 40 Commission and court-of-original-jurisdiction cases that originated between September 1963 and January 1986. The cases resulted from actions initiated by 40 different parties before the Commission, Federal District Courts, and—in one case—a U.S. Appeals Court. The time period for resolving the cases ranged in length from 3 months to over 16 years. Case resolution averages are about 59 months for the mean and about 49 months for the median.

Table III.1 lists the 40 cases by alphabetical order of the case initiator. Table III.2 lists the 40 cases by a case number arbitrarily assigned to each case during our work. In most cases, the decision citations, docket numbers, and origin dates listed in the tables pertain to Commission and courts-of-original-jurisdiction cases. However, where these data were not readily available, appeals court data are listed. (See footnotes to the tables.) The final decision dates are the dates of the last decision made in the case—in some cases, these decisions were administrative and did not directly address transmission-access issues. For court cases, the final decision date does not include decisions that deny rehearing.

Table III.1: Alphabetical Index of Cases

Case No.	Case initiator	Decision citation	Dockets
39	Almeda Mall[a]	615 F.2d 343	78-1586
31	Borough of Ellwood City	462 F.Supp. 1343	77-1145
36	Borough of Lansdale	517 F.Supp. 218	78-2533
25	Boston Edison Co.	56 FPC 3414 9 FERC 61054	E-8187, E-8700 E-8187, E-8700, ER76-203 ER76-238, ER78-516
16	Buckeye Power Inc.	18 FERC 61067 37 FERC 61208	EL79-20 EL79-20
11	Central Power & Light Co.	17 FERC 61078	EL79-8, E-9558
7	Central Virginia Electric Cooperative, Inc.	24 FERC 63118	EL78-13
9	Central & South West Services, Inc.	34 FERC 61306	ER85-412
30	City of Chanute	564 F.Supp. 1416	83-1104
26	City of Cleveland	46 FPC 1326 47 FPC 747 49 FPC 118	E-7631, E-7633 E-7631, E-7633, E-7713 E-7631, E-7633, E-7713
33	City of Cleveland	538 F.Supp. 1306	C75-560
37	City of Grotor	497 F.Supp. 1040	15609
5	City of Manti	34 FERC 63043 40 FERC 61004	EL85-12 EL85-12
8	City of Mishawaka	55 FPC 2199	E9480
22	Cleveland Electric Illuminating Co.	11 FERC 61114	ER78-194

(continued)

Case No.	Case initiator	Decision citation	Dockets
19	Commonwealth Edison Co.	35 FERC 61352 38 FERC 61269	ER86-76, ER86-230 ER86-76, ER86-230
10	Confederated Salish & Kootenai Tribes	28 FERC 61141 32 FERC 61070	EL84-12 EL84-12
32	Department of Water & Power, Los Angeles	759 F.2d 684	84-7618
20	Florida Power Corp.	52 FPC 588	E-7679
4	Florida Power & Light Co.	28 FERC 61202	ER83-523
28	Florida Power & Light Co.	3 FERC 63015 8 FERC 61121 9 FERC 62144 12 FERC 63014 19 FERC 61269	ER78-19, ER78-81 ER78-19, ER78-81 ER78-19 ER78-19 ER77-175, ER78-19
35	Gainesville Utilities Department	40 FPC 1226 402 U.S. 515	E-7257 464
38	Greenwood Utilities Commission[b]	751 F.2d 1484	Civil Action J80-350-B
34	Idaho Power Co.	32 FPC 342	Project 1971
6	Kansas Power & Light Co.	22 FERC 61221 27 FERC 61241 28 FERC 61237 30 FERC 63028	EL82-22 ER83-418, ER84-79, ER84-80, ER84-81, ER84-188 ER83-418, ER84-79, ER84-80, ER84-81 ER83-418, ER84-188
17	Kentucky Utilities Co.	10 FERC 63057	ER78-417, ER78-22
23	MAPP Agreement[c]	58 FPC 2622 58 FPC 2622; 2638	E-7734 E-7734
18	NEPOOL[d]	56 FPC 1562	E-7690
13	NEPOOL Participants, Appalachian Power Co., et al.	52 FPC 410	RM74-22, E-8589, E-8550
21	Niagara Mohawk Power Corp.	55 FPC 1711 56 FPC 666	E-9379 E-9550
15	Otter Tail Power Co.[e]	12 FERC 61168 331 F.Supp. 54 410 U.S. 366	ER77-5, E-8152 6-69-Civ139 71-991
27	Pacific Gas & Electric Co.[f]	59 FPC 591 6 FERC 61178 24 FERC 63001	E-7777, E-8928 E-7777, E-7796 2735-001, 1988-003, 233-006
27	Pacific Power & Light Co.	26 FERC 63048	E-7777, E-7796
2	South Carolina Electric & Gas Co.	15 FERC 61298 19 FERC 62239	ER81-436 ER81-436
1	Southeastern Power Administration	25 FERC 61204	EL80-7
24	Town of Easton	24 FERC 61251	EL82-1
29	Town of Massena	8 FERC 61090 8 FERC 61199 1980–2 TRADE P63526	E-9565 E-9565 79-CV-163
40	Utah Power & Light Co.[g]	504 F.2d 728	4-72-10
15	Village of Elbow Lake	40 FPC 1262 46 FPC 675	E-7278 E-7278
14	Village of Penn Yan	6 FERC 61283 18 FERC 61105	EL79-29 EL78-29, EL79-29

(continued)

Case No.	Case initiator	Decision citation	Dockets
3	Wabash Valley Power Association, Inc.	28 FERC 61091	EL83-4
12	Wisconsin Electric Power Co.	40 FERC 63007	ER85-785, ER86-387, ER86-526

[a]The decision citation and docket number for Almeda Mall refer to a decision from the U.S. Court of Appeals (Fifth Circuit).

[b]For the Greenwood Utilities Commission case, the decision citation is from the U.S. Court of Appeals (Fifth Circuit), and the docket number is from the District Court of the Southern District of Mississippi.

[c]MAPP is the Mid-Continent Area Power Pool. The term "power pool" refers to a group of utilities which establish formal agreements for the joint operation of their respective power systems.

[d]NEPOOL is the New England Power Pool.

[e]Otter Tail Power Co. and Village of Elbow Lake are considered to be one case for the purposes of our review.

[f]Pacific Gas and Electric Co. and Pacific Power and Light Co. are considered to be one case for the purposes of our review.

[g]For the Utah Power and Light Company case, the decision citation is from the U.S. Court of Appeals (Ninth Circuit), and the docket number is from the District Court of Idaho.

Table III.2: Numerical Index of Cases

No.	Initiator	Origin date	Date of last decision (months)	Duration
1	Southeastern Power Administration	12/11/79	02/03/84	50
2	South Carolina Electric & Gas Co.	05/01/81	07/21/82	14
3	Wabash Valley Power Association, Inc.	11/03/82	07/03/84	20
4	Florida Power & Light Co.	05/23/83	05/17/85	24
5	City of Manti	11/26/84	07/01/87	32
6	Kansas Power & Light Co.	08/09/82	10/21/86	50
7	Central Virginia Electric Cooperative, Inc.	03/14/78	11/10/83	68
8	City of Mishawaka	06/10/75	05/17/76	11
9	Central & South West Services, Inc.	04/02/85	02/28/86	10
10	Confederated Salish & Kootenai Tribes	04/16/84	01/09/86	21
11	Central Power & Light Co.	02/09/79	07/23/87	101
12	Wisconsin Electric Power Co.	09/03/85	07/09/87	22
13	NEPOOL Participants, Appalachian Power Co.	01/10/74	09/26/75	20
14	Village of Penn Yan	05/25/78	02/10/82	45
15	Village of Elbow Lake	03/16/66	08/04/82	197
16	Buckeye Power Inc.	06/07/79	12/29/86	90
17	Kentucky Utilities Co.	07/06/78	02/24/87	103
18	NEPOOL	11/12/71	10/25/79	95
19	Commonwealth Edison Co.	01/03/86	08/06/87	19
20	Florida Power Corp.	11/12/71	08/30/74	33

(continued)

No.	Initiator	Origin date	Date of last decision (months)	Duration
21	Niagara Mohawk Power Corp.	04/14/75	09/24/76	17
22	Cleveland Electric Illuminating Co.	01/27/78	01/15/82	48
23	MAPP Agreement	05/23/72	06/05/79	85
24	Town of Easton	10/26/81	12/22/83	26
25	Boston Edison Co.	05/07/73	06/13/80	85
26	City of Cleveland	12/06/71	12/11/86	180
27	Pacific Gas & Electric Co.	09/29/72	02/10/84	137
28	Florida Power & Light Co.	10/14/77	05/17/85	91
29	Town of Massena	08/11/76	09/30/82	73
30	City of Chanute	00/00/83[a]	02/05/85	14
31	Borough of Ellwood City	10/03/77	01/04/79	15
32	Department of Water & Power, Los Angeles	01/16/85	04/24/85	3
33	City of Cleveland	00/00/75[b]	10/20/80	59
34	Idaho Power Co.	09/26/63	07/07/77	166
35	Gainesville Utilities Department	11/22/65	05/24/71	66
36	Borough of Lansdale	07/00/78	11/08/82	52
37	City of Groton	02/00/73	10/13/81	104
38	Greenwood Utilities Commission	07/31/80	02/07/85	55
39	Almeda Mall	03/20/78	04/11/80	25
40	Utah Power & Light Co.	12/12/72	09/20/74	21

[a]There was no origin date listed for this case. However, the docket number (83-1104) indicates that this case originated in calendar year 1983.

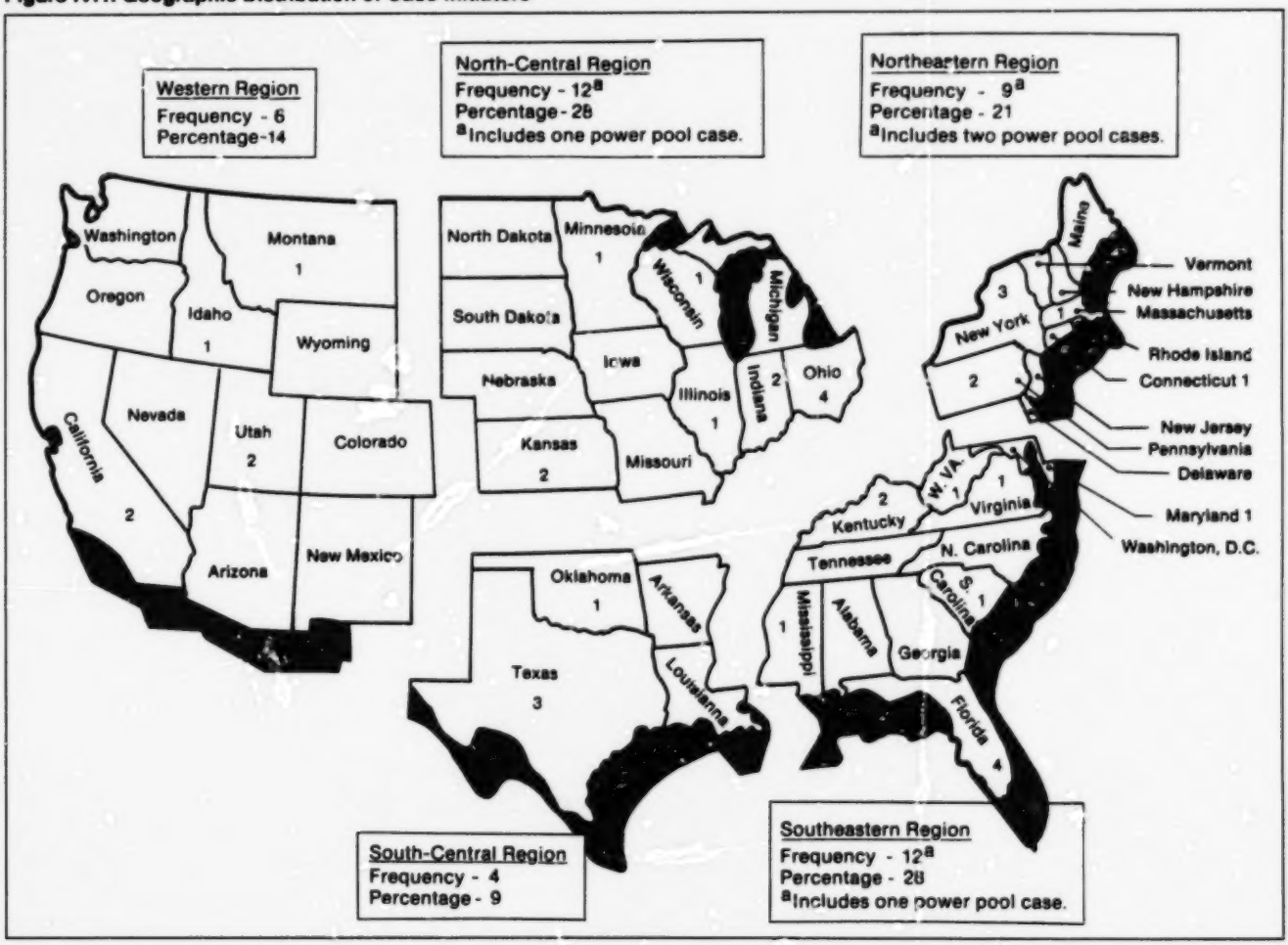
[b]There was no origin date listed for this case. However, the docket number (C75-560) indicates that this case originated in calendar year 1975.

Geographic Location of Case Initiators

Geographic locations of the parties initiating the 40 cases in our data base were plotted on a map to determine geographic concentrations of transmission-access issues. Cases initiated by power pools were considered as a single initiator, and a single occurrence was logged for a geographic area. Cases initiated by several parties from a single state were also considered a single initiator/state location. For cases initiated by nonpower-pool parties from different states, each initiator's state was counted in determining geographic location.

The 40 cases in our data base represent 43 initiator/state occurrences, and the greatest geographic concentrations were in the north-central and southeastern areas (28 percent each). The geographic distribution of the case initiators is shown in figure IV.1.

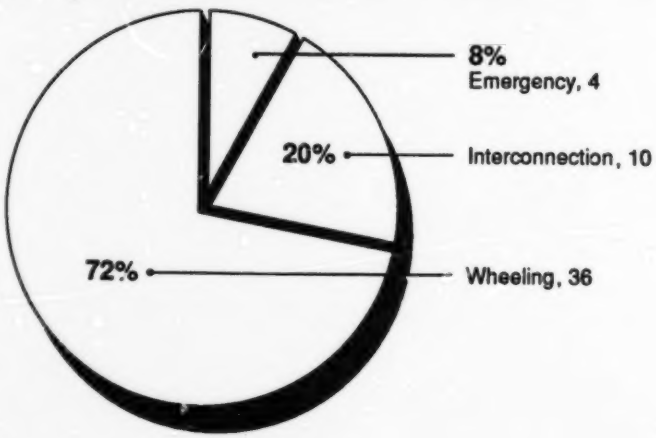
Figure IV.1: Geographic Distribution of Case Initiators



Types of Transmission Service Requested

Transmission-access cases are categorized for this report into three types of requested service—emergency, interconnection, and wheeling. In the 40 cases we reviewed, there were 50 requests for these three types of service (multiple requests were made in eight cases). As shown in figure V.1 below, wheeling accounted for nearly three-fourths of all services requested.

Figure V.1: General Frequency Distribution of Requested Services



Tables V.1 and V.2 show, respectively, the relative frequency of services requested within individual geographic regions, and the national distribution of requested services among the regions.

Table V.1: Relative Frequency of Requested Services Within Each Region

	Emergency		Interconnection		Wheeling		Total	
Region	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Western			1	14	6	86	7	100
North-Central	2	12	5	29	10	59	17	100
South-Central			1	25	3	75	4	100
Northeast	2	17	1	8	9	75	12	100
Southeast			2	20	8	80	10	100

As shown in table V.2, the North-Central region accounted for one-half of the emergency and interconnection requests and nearly 30 percent of the wheeling requests.

Table V.2: National Distribution of Requested Services

	Emergency		Interconnection		Wheeling		Total	
Region	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
Western			1	10	6	17	7	14
North-Central	2	50	5	50	10	28	17	34
South-Central			1	10	3	8	4	8
Northeast	2	50	1	10	9	25	12	24
Southeast			2	20	8	22	10	20
Total	**4**	**100**	**10**	**100**	**36**	**100**	**50**	**100**

Frequency of Services Requested in Commission Cases: Pre- and Post-PURPA

Thirty-one of the 40 cases we reviewed were regulatory cases. Eighteen of the regulatory cases originated during the 15-year period preceding PURPA's enactment (Sept. 1963 to Nov. 1978). The remaining 13 cases originated in the 7-year post-PURPA period (Nov. 1978 to Jan. 1986). In the 18 pre-PURPA cases, there were 25 requests for transmission services, and in the 13 post-PURPA cases there were 14. As shown in figures V.2 and V.3, wheeling—which accounted for 60 percent of the pre-PURPA requests—took an even larger share of the post-PURPA requests (86 percent). Requests for both emergency and interconnection services declined after PURPA became law.

Figure V.2: Frequency Distribution of Requested Services in Commission Cases, Pre-PURPA

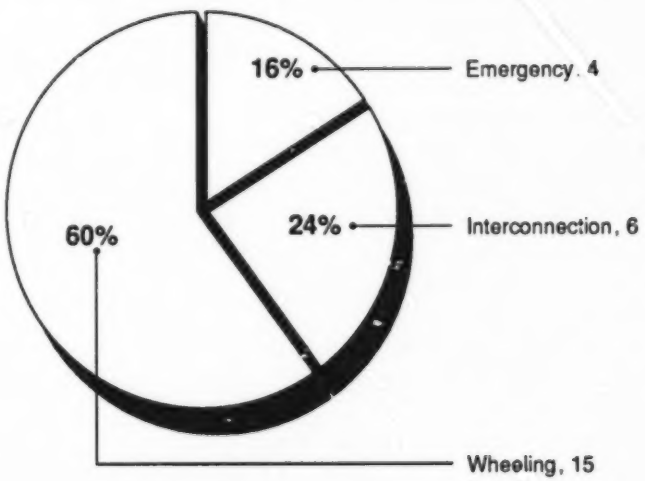
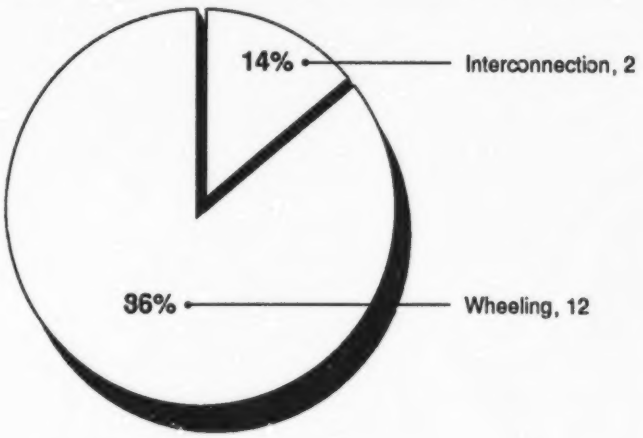


Figure V.3: Frequency Distribution of Requested Services in Commission Cases, Post-PURPA



Emergency, 0 (0%)

Issues Raised in Transmission-Access Cases

Transmission-access issues documented in Commission and federal court records-of-decision were included in our data base regardless of the ultimate case resolution—that is, they were identified even if they were later found to be without merit in the initial adjudication or during the appeal process. Table VI.1 provides a summary of the number of times specific issues were raised in our data base as well as a breakdown of the number of times specific issues were raised before and after PURPA's passage. Table VI.2 correlates specific issues raised with each court case in our data base. Table VI.3 provides a case-by-case breakdown of issues raised in Commission cases that have pre-PURPA origin dates, while table VI.4 depicts issues raised in Commission cases that have post-PURPA origin dates.

As shown in tables VI.1, VI.2, and VI.3, actual or constructive denial of access to transmission services was the most commonly mentioned issue before and after PURPA. Constructive denial means that, while a transmission line owner does not directly refuse access, the terms for access presented by the owner make access impractical.[1] The tables' "Other" category includes issues that occurred infrequently.[2]

[1]While some of the other issues presented in the tables could also be used to constructively deny a requester access to a transmission system, we relied on the characterization of the issues as provided in the information reviewed.

[2]The "Other" category includes four issues: "undue burden" placed on a utility, "conservation" of energy or capital, conditions that alter "existing competitive relationships," and "price squeeze" (where power is offered to a utility at a price that makes resale impractical).

Table VI.1: Summary of Issues Raised

	Issues raised						
	Reliability	Anti-competitive practices	Actual/ constructive denial	Discriminatory practices and/or pricing	Public interest	Other	Total
Court cases:							
Number	2	8	10	4	3	1	28
Percent	7	29	36	14	11	4	101[a]
Commission cases before PURPA:							
Number	8	13	13	12	12	6	64
Percent	13	20	20	19	19	9	100
Commission cases after PURPA:							
Number	3	7	9	9	1	6	35
Percent	9	20	26	26	3	17	101[b]
Total:							
Number	**13**	**28**	**32**	**25**	**16**	**13**	**127**
Percent	**10**	**22**	**25**	**20**	**13**	**10**	**100**

[a]Does not add to 100 percent because of rounding.

[b]Does not add to 100 percent because of rounding.

Table VI.2: Issues Raised in Court Cases

	Issues raised					
Case number	Reliability	Anti-competitive practices	Actual/ constructive denial	Discriminatory practices and/or pricing	Public interest	Other
29[a]	X	X	X			
30		X	X		X	
31		X	X	X		
32			X			
33	X	X	X			X
36		X	X	X		
37		X	X	X		
38		X	X			
39		X	X	X	X	
40			X		X	

[a]This is also a Commission case.

Table VI.3: Issues Raised in Commission Cases, Pre-PURPA

Case number	Issues raised					
	Reliability	Anti-competitive practices	Actual/ constructive denial	Discriminatory practices and/or pricing	Public interest	Other
7	X	X	X	X	X	X
8			X			
13	X	X			X	
14		X				
15	X	X	X	X	X	XX
17			X	X		X
18	X	X	X	X	X	
20		X	X			
21	X	X		X	X	
22		X	X	X		
23		X	X	X	X	
25			X	X	X	
26	X				X	
27		X	X	X	X	X
28	X	X	X	X	X	X
29		X	X	X	X	
34			X			
35	X	X		X	X	

Table VI.4: Issues Raised in Commission Cases, Post-PURPA

Case number	Issues raised					
	Reliability	Anti-competitive practices	Actual/ constructive denial	Discriminatory practices and/or pricing	Public interest	Other
1		X				X
2			X			X
3	X	X	X	X		XXX
4		X		X		
5	X		X			
6	X	X	X	X		
9				X		
10			X	X	X	
11			X			
12		X		X		
16		X	X	X		
19		X	X	X		X
24			X	X		

Resolution of Transmission-Access Cases by Regulatory Agencies and Courts

Each of the 40 cases in our data base contains requests for 1 or more of the 3 types of transmission services discussed in appendix V—emergency, interconnection, and/or wheeling. Regulatory agencies and courts-of-original-jurisdiction rendered 75 decisions on these requests, and the results are summarized in table VII.1 and categorized in table VII.2. Appeals courts reviewed 27 of these decisions, and tables VII.3 and VII.4 correlate the appeals-level decisions with the type of transmission access requested. Figures VII.1 and VII.2 display regulatory agency decision results on a pre- and post-PURPA basis.

Decision Categories

Court and Commission decisions are categorized under three headings: granted, denied, and compromised. Regulatory agency resolutions are categorized under an additional heading—settled—and some appellate court decisions are categorized as overturned/remanded. Granted decisions are those that either allow increased access over existing facilities or order the establishment of physical interconnection(s) between utility systems. Denied access decisions rule against the request for increased access and/or interconnection. Compromised decisions are those that grant part of the request for additional access but also deny part of it. Settled decisions occur when the parties to a dispute reach agreement on issues before the Commission renders a decision. Intervenors may, however, contest the terms of a settled agreement, and the terms of all settled agreements must meet regulatory agency approval. In Upheld decisions, the appellate court affirms a lower court or Commission decision. In Overturned decisions, the appellate court reverses a lower court or Commission decision. In Remanded decisions, the appellate court returns the decision to the lower court or Commission with instructions to reconsider its original decision.

Correlation of Decisions, Decision Makers, and Types of Requested Service

Of the 75 original-jurisdiction decisions rendered on requests for transmission access, 29—or 39 percent—granted at least partial access (granted and compromised) as shown in table VII.1 and 28—or 37 percent—denied the access request.

Table VII.1: Summary of Original-Jurisdiction Decisions

Agency and requested service	Decision				
	Granted	Denied	Compromised	Settled	Total
Commission:					
Emergency	2	3	1		6
Interconnection	7	1	1	1	10
Wheeling	6	15	8	17	46
Court of Original Jurisdiction:					
Interconnection	1	1			2
Wheeling	3	8			11
Total:					
Number	**19**	**28**	**10**	**18**	**75**
Percent	25	37	13	24	99[a]

[a]Does not add to 100 percent because of rounding.

In table VII.2, the "E," "I," and "W" designations in the decision columns indicate the type of transmission request being decided—"E" for emergency, "I" for interconnection, and "W" for wheeling.

Table VII.2: Original-Jurisdiction Decisions

Case No.	Party initiating case	Decision citation	Decision			
			Granted	Denied	Compromised	Settled
1	Southeastern Power Administration	25 FERC 61204		W		
2	South Carolina Electric & Gas Co.	15 FERC 61298		W		
		19 FERC 62239				W
3	Wabash Valley Power Association, Inc.	28 FERC 61091				W
4	Florida Power & Light Co.	28 FERC 61202				W
5	City of Manti	34 FERC 63043		W		
		40 FERC 61004				W
6	Kansas Power & Light Co.	22 FERC 61221				W
		27 FERC 61241				W
		28 FERC 61237		W		W
		30 FERC 63028		W		
7	Central Virginia Electric Coop., Inc.	24 FERC 63118	I			
8	City of Mishawaka	55 FPC 2199				I
9	Central & South West Services	34 FERC 61306				W
10	Confederated Salish & Kootenai Tribes	28 FERC 61141		W		
		32 FERC 61070				W
11	Central Power & Light Co.	17 FERC 61078	I			W
12	Wisconsin Electric Power Co.	40 FERC 63007		W		

(continued)

Case No.	Party initiating case	Decision citation	Decision			
			Granted	Denied	Compromised	Settled
13	NEPOOL Participants, Appalachian Power Co.	52 FPC 410		W		
14	Village of Penn Yan	6 FERC 61283	W			
		18 FERC 61105		W		
15	Village of Elbow Lake	40 FPC 1262			E,I	
		46 FPC 675	I			
	Otter Tail Power Co.	331 F.Supp 54	W			
		12 FERC 61168			W	
16	Buckeye Power Inc.	18 FERC 61067	I			
		37 FERC 61298	I			
17	Kentucky Utilities Co.	10 FERC 63057			W	
18	NEPOOL	56 FPC 1562			W	
19	Commonwealth Edison Co.	35 FERC 61352	W			
		38 FERC 61269				W
20	Florida Power Corp.	52 FPC 588				W
21	Niagara Mohawk Power Corp.	55 FPC 1711		W		
		56 FPC 666		E,I		
22	Cleveland Electric Illuminating Co.	11 FERC 61114			W	
23	MAPP Agreement	58 FPC 2622;2638		W		
		58 FPC 2622			W	
24	Town of Easton	24 FERC 61251			W	
25	Boston Edison Co.	56 FPC 3414		W		W
		9 FERC 61054		W		
26	City of Cleveland	46 FPC 1326	W	E		
		47 FPC 747	E			
		49 FPC 118	E			
27	Pacific Gas & Electric Co.	59 FPC 591				W
		6 FERC 61178				W
		24 FERC 63001	I,W			
27	Pacific Power & Light Co.	26 FERC 63048			W	
28	Florida Power & Light Co.	3 FERC 63015		W		
		8 FERC 61121	W			
		9 FERC 62144				W
		12 FERC 63014			W	
		19 FERC 61269				W
29	Town of Massena	8 FERC 61090		W		
		8 FERC 61199		E		
		1980–2 TRADE P63526		W		
30	City of Chanute	564 F.Supp 1416	I,W			
31	Borough of Ellwood City	462 F.Supp 1343		W		
32	Dept. of Water & Power, Los Angeles	759 F.2d 684		W		
33	City of Cleveland	538 F.Supp 1306		I,W		
34	Idaho Power Co.	32 FPC 342	W			
35	Gainesville Utilities Dept.	40 FPC 1226	I			
36	Borough of Lansdale	517 F.Supp 218		W		
37	City of Groton	497 F.Supp 1040		W		

(continued)

Case No.	Party initiating case	Decision citation	Decision			
			Granted	Denied	Compromised	Settled
38	Greenwood Utilities	751 F.2d 1484		W		
39	Almeda Mall	615 F.2d 343		W		
40	Utah Power & Light Co.	504 F.2d 728	W			
	Total		**19**	**28**	**10**	**18**

Note: "E" = emergency
"I" = interconnection
"W" = wheeling.

Commission Decisions on Access Requests: Pre- and Post-PURPA

As shown in figures VII.1 and VII.2, the number and percentage of requests for access that were resolved by settlements increased markedly after PURPA became law. The percentages for all other decision categories decreased after PURPA.

Figure VII.1: Commission Decisions, Pre-PURPA

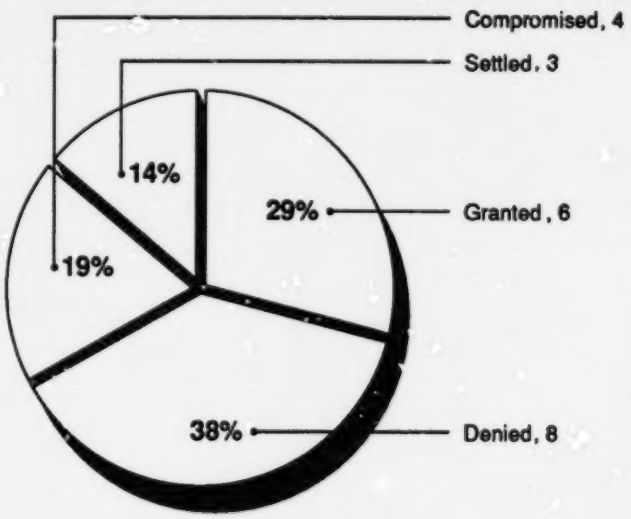
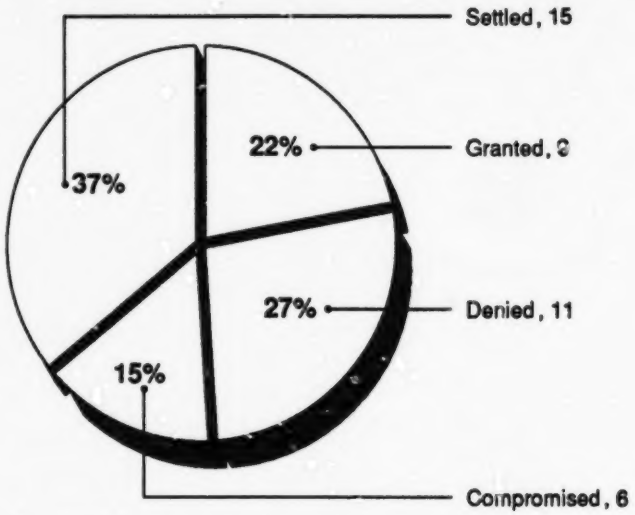


Figure VII.2: Commission Decisions, Post-PURPA



Note: Percentages do not add to 100 because of rounding.

Appellate Court Decisions

Appellate courts reviewed 27 Commission and lower court decisions. The courts upheld the decisions in 16 instances and overturned or remanded 11 others.

Table VII.3: Appellate Court Upholds Original-Jurisdiction Decisions

Agency and requested service	Original-jurisdiction decision			
	Granted	Denied	Compromised	Total
Commission:				
Emergency			1	1
Interconnection	3		1	4
Wheeling	2	3	2	7
Lower court:				
Interconnection			1	1
Wheeling	2		1	3
Total:				
Number	**7**	**3**	**6**	**16**
Percent	44	19	38	101[a]

[a]Does not add to 100 percent because of rounding.

Table VII.4: Appellate Court Overturns/ Remands Original-Jurisdiction Decisions

Agency and requested service	Original-jurisdiction decision			
	Granted	Denied	Compromised	Total
Commission:				
Emergency	1			1
Interconnection	1	1		2
Wheeling	2	1	1	4
Lower court:				
Wheeling		4		4
Total:				
Number	**4**	**6**	**1**	**11**
Percent	36	55	9	100

Legislative Authorities Cited in Transmission-Access Cases

There are 140 references to legal citations in the data base, and as shown in tables VIII.1 and VIII.2, 151 instances where these citations are linked with either Commission or Court case decisions. (Since some of the cases contained requests for more than 1 transmission service and/or resulted in multiple decisions, some of the 140 legal references are linked by more than 1 decision.) It should be noted, however, that although a record-of-decision may contain references to several legal citations, not all of the citations are specifically cited as a basis for the final decision. Therefore, no direct correlation can be made between the individual legal citations and the decision categories listed in tables VIII.1 and VIII.2.

The most commonly cited legal references in the Commission records-of-decision pertain to rates—FPA, Sections 205 and 206. In 64 of these 68 citations (see table VIII.1), the dispute involved rates for wheeling services. Seventeen of the 20 court decisions included references to antitrust legislation.

Table VIII.1: Legislative Authority Cited in Commission Records-of-Decision

Federal Power Act citations		Decision				Total	
		Granted	Denied	Compromised	Settled	Number	Percent
General:							
202(a)	(interconnection)	1	2	2	1	6	4
202(b)	(interconnection)	8	3	4	1	16	12
202(c)	(emergency interconnection)	3	4	3	0	10	8
205	(rates)	5	10	7	13	35	27
206	(rates)	3	11	6	13	33	25
As amended by PURPA:							
210	(interconnection)	1	1	0	0	2	2
211	(wheeling)	0	3	0	4	7	5
212	(interconnection/ wheeling)	1	3	0	4	8	6
Other[a]		5	4	3	2	14	11
Total						**131**	**100**

[a]"Other" contains cites that refer to the Federal Power Act in general or other statutes not listed in this table.

Table VIII.2: Legislative Authority Cited in Original-Jurisdiction Court Decisions

Citation	Decision		Total	
	Granted	Denied	Number	Percent
Clayton Antitrust Act	3	8	11	55
Sherman Antitrust Act	2	4	6	30
Other[a]	1	3	3	15
Total			**20**	**100**

[a]Includes references to six laws: Bonneville Project Act, Pacific Northwest Power Preference Act, Federal Columbia River Transmission System Act, Pacific Northwest Electric Power Planning and Conservation Act, Robinson-Patman Price Discrimination Act, and an act for Rights-of-Way Through Public Lands for Individual and Other Reservations for Power and Communications Facilities.

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